रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—09 REGISTERED NO. DL—(N)04/0007/2003—09

भारत का राजपत्र
The Gazette of India
असाधारण
EXTRAORDINARY
भाग II — खण्ड 2
PART II — Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 31] नई दिल्ली, शुक्रवार, दिसम्बर 4, 2009/अग्रहायण 13, 1931
No. 31] NEW DELHI, FRIDAY, DECEMBER 4, 2009 / AGRAHAYANA 13, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 4th December, 2009:—

BILL NO. 113 OF 2009

A Bill to repeal the State Bank of Saurashtra Act, 1950 *and further to amend the State Bank of India (Subsidiary Banks) Act,* 1959.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the State Bank of Saurashtra (Repeal) and the State Bank of India (Subsidiary Banks) Amendment Act, 2009. Short title and commencement.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

REPEAL OF THE STATE BANK OF SAURASHTRA ACT, 1950

2. (*1*) The State Bank of Saurashtra Act, 1950 is hereby repealed. Repeal and savings.

(*2*) Notwithstanding such repeal, anything done or any action taken including any agreement entered into, under the provisions of the State Bank of Saurashtra Act, 1950, by the State Bank of Saurashtra shall continue to be in force and have effect as if this Act has not been enacted.

(*3*) The mention of particulars in sub-section (*2*) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeal. 10 of 1897.

CHAPTER III

AMENDMENTS TO THE STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959

Amendment of section 2.

3. In section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (hereafter in this Chapter referred to as the Subsidiary Banks Act), 38 of 1959.—

(*i*) in clause (*a*), sub-clause (*iv*) shall be omitted;

(*ii*) clause (*i*) shall be omitted;

(*iii*) in clause (*k*), the words "and the Saurashtra Bank" shall be omitted.

Amendment of section 14.

4. In the Subsidiary Banks Act, in section 14,—

(*i*) in the marginal heading, the words ", the Saurashtra Bank" shall be omitted;

(*ii*) in sub-section (*1*), the words ", the State Government of Gujarat in respect of the Saurashtra Bank" shall be omitted;

(*iii*) in sub-section (*2*) and in the proviso, the words ", the State Government of Gujarat," and "or the State Government of Gujarat" shall, respectively, be omitted;

(*iv*) in sub-section (*3*), the words ", the State Government of Gujarat" shall be omitted;

(*v*) in sub-section (*4*), the words ", the State Government of Gujarat" shall be omitted.

Amendment of section 23

5. In the Subsidiary Banks Act, in section 23,—

(*i*) for the words ", the Hyderabad Bank and the Saurashtra Bank", the words "and the Hyderabad Bank" shall be substituted;

(*ii*) for the words ", the Hyderabad Bank or the Saurashtra Bank", the words "or the Hyderabad Bank" shall be substituted.

Amendment of section 42.

6. In the Subsidiary Banks Act, in section 42, for the words ", the Hyderabad Bank or the Saurashtra Bank", the words "or the Hyderabad Bank" shall be substituted.

Amendment of section 46

7. In the Subsidiary Banks Act, in section 46,—

(*i*) in the marginal heading, the words "and the Saurashtra Bank" shall be omitted;

(*ii*) in sub-section (*1*), the words "or the Saurashtra Bank," shall be omitted;

(*iii*) the *Explanation* shall be omitted.

Amendment of section 47.

8. In the Subsidiary Banks Act, in section 47, in sub-section *(1),* for the words ", the Hyderabad Bank or the Saurashtra Bank", the words "or the Hyderabad Bank" shall be substituted.

Amendment of section 49

9. In the Subsidiary Banks Act, in section 49,—

(*i*) in sub-section (*1*), the words "or the Saurashtra Bank" shall be omitted;

(*ii*) in sub-section (*2*), the words "or of the Saurashtra Bank" shall be omitted;

(*iii*) in sub-section (*3*), the words "or the Saurashtra Bank" shall be omitted.

Amendment of section 56.

10. In the Subsidiary Banks Act, in section 56,—

(*i*) in the marginal heading, the words "and the State Bank of Saurashtra" shall be omitted;

(*ii*) the words "and the Saurashtra Bank" shall be omitted;

(*iii*) the words "or the Saurashtra Bank, as the case may be," , at both the places where they occur shall be omitted.

Amendment of First Schedule.

11. In the First Schedule to the Subsidiary Banks Act, in paragraph 1, in sub-paragraph A, for the words ", the Bank of Patiala or the Saurashtra Bank," the words "or the Bank of Patiala" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The State Bank of Saurashtra was constituted under the State Bank of Saurashtra Act, 1950 (10 of 1950) as amended by the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959). All shares of the State Bank of Saurashtra vest in the State Bank of India. In view of the recent developments in international banking scenario and for better functioning, the State Bank of India has, with the sanction of the Central Government and in consultation with the Reserve Bank of India, entered into negotiations for acquiring the business, including the assets and liabilities of the State Bank of Saurashtra. The terms and conditions relating to such acquisitions were agreed upon by the Central Board of the State Bank of India and the Board of State Bank of Saurashtra in the form of a Scheme.

2. Thereafter, the Reserve Bank of India has approved the acquisition of the business of the State Bank of Saurashtra and in exercise of the powers conferred by sub-section *(2)* of section 35 of the State Bank of India Act, 1955 (23 of 1955), the Central Government has accorded its sanction thereto. Accordingly, the Acquisition of the State Bank of Saurashtra Order, 2008 was published in the Gazette of India, *vide*, Notification No. G.S.R. 589(E) dated the 13th August, 2008. As per the said order, the business of the State Bank of Saurashtra has to be carried out by the State Bank of India in accordance with the State Bank of India Act, 1955. After the acquisition of the State Bank of Saurashtra by the State Bank of India, the State Bank of Saurashtra ceased to exist and, therefore, it is necessary to repeal the State Bank of Saurashtra Act, 1950.

3. There are certain provisions in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), which apply to the State Bank of Saurashtra. After the acquisition of the State Bank of Saurashtra by the State Bank of India, it is not necessary to retain such provisions in the State Bank of India (Subsidiary Banks) Act, 1959. Therefore, the amendment is necessary in the provisions of the said Act, in so far as they relate to the State Bank of Saurashtra. The amendments are consequential in nature, to make provisions empowering the State Bank of India to amend regulations as are applicable to the former employees of the State Bank of Saurashtra, their dependents and in respect of the employees of the State Bank of Saurashtra who opt to be governed by such regulations in accordance with the Scheme of acquisition.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 20th November, 2009.

PRANAB MUKHERJEE.

BILL NO. 112 OF 2009

A Bill further to amend the Essential Commodities Act, 1955 *and to make provisions for validation of certain orders issued by the Central Government determining the price of levy sugar and actions taken under those orders and for matters connected therewith.*

WHEREAS a Bench of three Judges of the Hon'ble Supreme Court in the case of Modi Industries Ltd. and Another *versus* Union of India and Others on the 20th February, 1996 reported in (1999) 9 SCC 245, accepted the statement made on behalf of the Union of India that while determining the minimum cane price of levy sugar, regard had been given only to the minimum cane price referred to in section 3(3C) of the Essential Commodities Act, 1955 and that the additional cane price payable under clause 5A of the Sugarcane (Control) Order, 1966 had not been taken into account and held that the case was not covered by the decision of the Supreme Court dated 22-9-1993 in Shri Malaprabha Coop. Sugar Factory Ltd. *versus* Union of India [(1994) 1 SCC 648 Malaprabha (1)];

AND WHEREAS subsequently the decision of a Bench of three Judges of the Supreme Court dated 28-1-1997 in the case of Shri Malaprabha Coop. Sugar Factory Ltd. *versus* Union of India (Malaprabha 2) (1997) 10 SCC 216 held that the decision in Modi Industries' case did not have any bearing on the fixation of price of levy sugar for the year 1975-1976 to 1979-1980;

AND WHEREAS the decision of the Bench of three Judges in Modi Industries Ltd. and Another *versus* Union of India and others was followed in the case of Bharat Sugar Mills Ltd. and another *versus* Union of India, (decided on 19th August, 1998) after noticing the judgments in Shri Malaprabha Coop. Sugar Factory Ltd. (Malaprabha 1) and Shri Malaprabha Coop. Sugar Factory Ltd. [(Malaprabha 2)];

AND WHEREAS in the case of Union of India and Others *versus* Triveni Engineering Works Ltd. (1999) 9 SCC 244, by judgment dated 2-2-1999, the appeal of the Union of India was allowed relying upon the decision in Modi Industries Ltd. and the decision of the Bench of two Judges of the Supreme Court in Bharat Sugar Mills Ltd.;

AND WHEREAS in Shri Malaprabha Coop. Sugar Factory Ltd. *Versus* Union of India, [(2002) 9 SCC 716] (Malaprabha 3) Contempt Petitions filed against the Union of India for alleged non-compliance with the decision in Malaprabha 1 and Malaprabha 2, were dismissed by order dated 16-11-2000 and the working statement given before the Hon'ble Court showed that the retention of fifty per cent. being a factor which can be taken into consideration in determining element (d) in section 3(3C) of the Essential Commodities Act was taken into account, not to the extent as desired by the petitioners, but the result of this was that the levy price fixed at Rs 163.780 in respect of West U.P. had gone up to Rs. 172.430, the Hon'ble Supreme Court held that "the said fixation is in accordance with law and the directions given by this Court have been complied with. Neither a case for contempt has been made out nor is there any justification, in our opinion, for giving any direction to the Government to re-fix the levy price under section 3(3C) of the Essential Commodities Act.";

AND WHEREAS notwithstanding the judgment in the Modi Industries case, the Bharat Sugar Mills case, and the Triveni Engineering Works Ltd. case and the judgment of a Bench of three Judges of the Hon'ble Supreme Court in Shri Malaprabha Coop. Sugar Factory Ltd. (Malaprabha 3), a Bench of two Judges of the Hon'ble Supreme Court in Mahalakshmi Sugar Mills Coop. Ltd. and Anr. *Versus* Union of India and Others (2008) 6 SCALE 275, in a judgment dated 31st March, 2008, in relation to sugar seasons 1983-1984 and 1984-1985, held that the actual price payable to cane growers was absolutely relevant for determining the price of levy sugar;

AND WHEREAS there are thus conflicting decisions as to the factors to be taken into consideration in determining the price of levy sugar;

AND WHEREAS it has become necessary to make suitable amendments to the Essential Commodities Act, 1955 to clarify and reiterate the underlying principles and the factors that needed to be taken into consideration in determining the price of levy sugar and to give effect accordingly;

AND WHEREAS in order to remove doubts and ambiguities it has become necessary to make such provisions with retrospective effect to validate the determination of the price of levy sugar by the Central Government from time to time pursuant to the provisions of the Essential Commodities Act, 1955.

10 of 1955.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Essential Commodities (Amendment and Validation) Act, 2009.

(*2*) It shall be deemed to have come into force on the 21st day of October, 2009.

Amendment of section 3.

10 of 1955.

2. In section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act)—

(*a*) in sub-section (*3C*), the existing *Explanation* shall be numbered as *Explanation I*, and after *Explanation I* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted, with effect from the 1st day of October, 1974, namely:—

'*Explanation II.*—For the removal of doubts, it is hereby declared that the expressions "minimum price" referred to in clause (*a*), "manufacturing cost of sugar" referred to in clause (*b*) and "reasonable return on the capital employed" referred to in clause (*d*) exclude the additional price of sugarcane paid or payable under clause 5A of the Sugarcane (Control) Order, 1966 and

any price paid or payable under any order or enactment of any State Government and any price agreed to between the producer and the grower of sugarcane or a sugarcane growers' co-operative society.';

(*b*) for sub-section (*3C*) and the *Explanations* thereunder, the following shall be substituted, and shall be deemed to have been substituted, on and from the 1st day of October, 2009, namely:—

'(*3C*) Where any producer is required by an order made with reference to clause (*f*) of sub-section (*2*) to sell any kind of sugar (whether to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons) whether a notification was issued under sub-section (*3A*) or otherwise, then, notwithstanding anything contained in sub-section (*3*), there shall be paid to that producer only such amount as the Central Government may, by order, determine, having regard to—

(*a*) the fair and remunerative price, if any, determined by the Central Government as the price of sugarcane to be taken into account under this section;

(*b*) the manufacturing cost of sugar;

(*c*) the duty or tax, if any, paid or payable thereon; and

(*d*) a reasonable return on the capital employed in the business of manufacturing of sugar:

Provided that the Central Government may determine different prices, from time to time, for different areas or factories or varieties of sugar:

Provided further that where any provisional determination of price of levy sugar has been done in respect of sugar produced up to the sugar season 2008-2009, the final determination of price may be undertaken in accordance with the provisions of this sub-section as it stood immediately before the 1st day of October, 2009.

Explanation.— For the purposes of this sub-section,—

(*a*) "fair and remunerative price" means the price of sugarcane determined by the Central Government under this section;

(*b*) "manufacturing cost of sugar" means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to the factory gate, to the extent it is borne by the producer;

(*c*) "producer" means a person carrying on the business of manufacturing sugar;

(*d*) "reasonable return on the capital employed" means the return on net fixed assets plus working capital of a producer in relation to manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section.'.

Validation of action taken, etc., under specified orders issued under sub-section (*3C*) of section 3 of the principal Act

3. (*1*) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

(*a*) all things done or all actions taken by the Central Government under the specified orders shall be deemed to be and deemed to have always been done or taken in accordance with law;

(*b*) no suit, claim or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority for the payment or adjustment of any payment in relation to the determination of price of levy sugar under any specified order;

(*c*) no court shall enforce any decree or order directing any payment in relation to the determination of price of levy sugar under any specified order;

(*d*) no claim or challenge shall be made in, or entertained by any court, tribunal or other authority on the ground that the Central Government did not take into consideration any of the factors specified in sub-section (*3C*) of section 3 of the principal Act in the determination of price of levy sugar under any specified order.

(*2*) In this section, "specified order" means any order relating to the determination of price of sugar issued under sub-section (*3C*) of section 3 of the principal Act before the 21st day of October, 2009, in relation to sugar produced in any sugar season up to and including the sugar season 2008-2009.

Repeal and saving.

Ord. 9 of 2009.

4. (*1*) The Essential Commodities (Amendment and Validation) Ordinance, 2009, is hereby repealed.

Ord. 9 of 2009.

(*2*) Notwithstanding the repeal of the Essential Commodities (Amendment and Validation) Ordinance, 2009, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall, subject to the provisions contained in sub-section (*3*), be deemed to have been done or taken under the principal Act, as amended by this Act.

(*3*) Nothing contained in sub-section (*2*) shall apply to clause 3B of the Sugarcane (Control) Order, 1966, as inserted by the Government of India in the Ministry of Consumer Affairs, Food and Public Distribution Order number S.O. 266 (E)/Ess Com./Sugarcane dated the 22nd October, 2009 or any thing done or any action taken thereunder.

STATEMENT OF OBJECTS AND REASONS

Sugar and sugarcane are essential commodities under the Essential Commodities Act, 1955. Under the system of partial control on sugar, a part of the sugar produced by sugar mills is requisitioned as levy sugar and the balance is allowed to be sold as non-levy (free sale) sugar in the open market. While price of non-levy sugar is determined by the market forces, the price of levy sugar is determined by the Central Government under the provisions of sub-section (3C) of section 3 of the Essential Commodities Act, 1955, having regard to—

(a) the minimum price, if any, fixed for sugarcane by the Central Government;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing of sugar.

2. A new clause 5A was inserted in the Sugarcane (Control) Order, 1966, with effect from the 1st day of October, 1974, providing for additional cane price to the cane growers as fifty per cent. share of the excess realisation from sale of sugar after the working results of the sugar factory become known.

3. The methodology regarding determination of price of levy sugar by the Central Government has been under continuous litigation in various courts. The Hon'ble Supreme Court in its two judgments on levy sugar prices delivered on the 22nd September, 1993 in C.A. Nos. 122-123 of 1981 (Malaprabha-I) and on the 28th January, 1997 also in C.A. Nos. 122-123 of 1981 (Malaprabha-II) directed the Central Government to amend the notifications taking into account the liability of the manufacturers under clause 5A of the Sugarcane (Control) Order, 1966 as regards cane price and re-fix the price of levy sugar for the years 1974-75 to 1979-80 having regard to the factors mentioned in sub-section (3C) of section 3 of the Essential Commodities Act, 1955. The Hon'ble Supreme Court also in its Order dated the 28th January, 1997 (*supra*) clarified that the liability of additional price of sugarcane under clause 5A of the Sugarcane (Control) Order, 1966 would get reflected in factors (a) or (b) or both of sub-section (3C) of the aforesaid section 3. The Hon'ble Supreme Court further held that mopping up of extra realisation is an element of factor (d) of sub-section (3C) of section 3 of the Essential Commodities Act, 1955.

4. The Hon'ble Supreme Court, in Modi Industries Ltd. and Anr. *vs.* Union of India and Ors. [T.C. (Civil) No.9/1990] on the 20th February, 1996 upheld the determination of price of levy sugar in respect of the sugar season 1982-1983 by taking note of the statement made by the Central Government in its additional affidavit that while determining the price of levy sugar regard had been taken only to the minimum cane price as spoken to in section 3(3C)(a) of the Essential Commodities Act, 1955 and the additional cane price payable under clause 5A of the Sugarcane (Control) Order, 1966 had not been taken into account and that also there had been no mopping up of excess realisation on free sale sugar while fixing the price of levy sugar for the season 1982-83. The Hon'ble Supreme Court was satisfied that this matter is not covered by the decision of the Supreme Court in Shri Malaprabha Co-operative Sugar Factory Ltd. *vs.* Union of India and Another [1994 (1) SCC 648]. Subsequently, in the case of Bharat Sugar Mills Ltd. and Another *vs.* Union of India and Others [T.C.(Civil) Nos. 15-17/1993] the Hon'ble Supreme Court held on the 19th August, 1998 that the price of levy sugar fixed for the sugar season 1982-83 was not covered by the decision of the Supreme Court in Shri Malaprabha Co-operative Sugar Factory Ltd. *vs.* Union of India and that the decision in the Modi Industries case [T.C. (Civil) No. 9 of 1990] is directly applicable to the set of transferred cases which also deal with the sugar price fixed for the season 1982-83. In the case of Union of India and Others *vs.* Triveni Engineering Works Ltd. and Others [(1999(9) SCC 244] on the 2nd February, 1999, the Hon'ble Supreme Court again held that the price of levy sugar for the year 1982-83 has already been upheld in its earlier three decisions.

The Central Government has consistently followed the methodology upheld by these judgments of the Supreme Court for determination of prices of levy sugar from the year 1980-81 onwards.

5. The Hon'ble Supreme Court in Mahalakshmi Sugar Mills Company Ltd. and Another *vs.* Union of India and Others [2008 (6) Scale 275] by its judgment dated the 31st March, 2008 has considered the scope and ambit of sub-section (3C) of section 3 of the Essential Commodities Act, 1955 and construed in relation to the sugar seasons 1983-1984 and 1984-1985 that both the additional price paid to the cane growers in terms of clause 5A of the Sugarcane (Control) Order, 1966 made under the said Act and the State Advised Price (SAP) or actual price of sugarcane paid should be factored in the computation of price of levy sugar. The Hon'ble Supreme Court while laying down the law for the future in its judgment dated the 31st March, 2008 also ordered for refixation of prices of levy sugar for the sugar years 1983-84 and 1984-85. Following the issues settled in the case of Mahalakshmi Sugar Mills Company Ltd., the Hon'ble Supreme Court in a later Order dated the 8th July, 2008 upheld the judgment of the Delhi High Court in the case of Saraswati Industrial Syndicate [LPA No. 1053/2007] directing the Central Government to re-fix the prices of levy sugar for the sugar years 1980-81 to 2000 - 2001(except for the year 1982-83).

6. Thus, due to the ambiguities in the existing law pertaining to determination of price of levy sugar, there have been conflicting decisions as to the factors to be taken into consideration in determining the price of levy sugar. It, therefore, became absolutely necessary to amend the Essential Commodities Act, 1955 to remove the defects and ambiguities in the law pertaining to determination of price of levy sugar thereby clarifying the expressions of cost components of levy sugar mentioned in sub-section (3C) of section 3 of the Essential Commodities Act, 1955. Further, since the refixation of prices of levy sugar for the years since 1980-81 would have led to controversy and confusion regarding the benefit of such refixation to various sugar mills with potential for huge unbudgeted financial burden on the Central Exchequer, it also became necessary to validate the actions of the Central Government taken since the 1st day of October, 1974 [that is the date of insertion of clause 5A in the Sugarcane (Control) Order, 1966] under the orders issued for determination of price of levy sugar under sub-section (3C) of section 3 of the Essential Commodities Act, 1955.

7. Having regard to the above, it is considered necessary to replace the concept of 'Minimum Price' of sugarcane with 'Fair and Remunerative Price' (FRP) of sugarcane by giving a reasonable margin to the farmers of sugarcane on account of 'risk' and 'profit' and, therefore, section 3 of the Essential Commodities Act, 1955 had to be amended to provide in clause (a) of sub-section (3C) thereof, the fair and remunerative price. Fixation of Fair and Remunerative Price not only meant giving higher price to the farmers for their sugarcane than the statutory minimum price fixed previously, but also ensured that a fair and remunerative price for sugarcane is fixed by the Central Government.

8. The sugar season 2009-2010 had already commenced on the 1st October, 2009 and, therefore, to achieve the above purposes immediately, the Essential Commodities (Amendment and Validation) Ordinance, 2009 (Ord. 9 of 2009) was promulgated by the President on the 21st October, 2009.

9. The Bill seeks to replace the aforesaid Ordinance.

SHARAD PAWAR

NEW DELHI;
The 24th *November*, 2009.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 3-4/2009-SP.II from Shri Sharad Pawar, Minister of Agriculture, Consumer Affairs, Food and Public Distribution to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Essential Commodities (Amendment and Validation) Bill, 2009, recommends introduction of the Bill in Lok Sabha under article 117(1) of the Constitution and the consideration of the Bill under article 117 (3) of the Constitution.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to amend section 3 of the Essential Commodities Act, 1955. Sub-clause (a) seeks to insert an *Explanation* in the said sub-section with effect from the 1st day of October, 1974 whereas sub-clause (b) seeks to substitute sub-section (3C) of section 3 of the Act on and from the 1st day of October, 2009. The proposed sub-section (3C) of section 3 of the Act provides that when sugar is sold to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons, the producer has to be paid the price therefor in accordance with the provisions of that sub-section. Although, the provision empowers the Central Government for procurement of sugar from the factories, yet, in practice, the sugar factories will be directed to sell sugar to the State Governments or their nominees or other purchasing organisations authorised in the matter. The quantum of sugar that may be levied also vary from season to season and also may depend on the production and stock position. Hence, it is not practicable to estimate the recurring expenditure involved from the Consolidated Fund of India at this stage. No non-recurring expenditure is likely to be incurred.

2. The Bill does not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to amend section 3 of the Essential Commodities Act, 1955 so as to empower the Central Government to determine, from time to time, the price of sugar which may be paid to a producer of sugar who is required to sell any kind of sugar by an order with reference to clause (f) of sub-section (2) of section 3 of the aforesaid Act. The factors which are to be taken into consideration for the determination of price of levy sugar have been incorporated in the proposed provision. The determination of price of levy sugar under the said clause 2 is a matter of procedure and administrative detail and it is not practicable to provide for the same in the Bill itself.

2. The delegation of legislative power is, therefore, of a normal character.

Memorandum explaining the modifications contained in the Bill to replace the Essential Commodities (Amendment and Validation) Ordinance, 2009

The Essential Commodities (Amendment and Validation) Bill, 2009 which seeks to repeal and replace the Essential Commodities (Amendment and Validation) Ordinance, 2009 modifies, apart from modifications of a drafting or consequential nature in the provisions of the Bill, the preamble to the Ordinance by a new preamble so as to make the intention more clear.

It is also proposed *vide* sub-clause (*3*) of clause 4 of the Bill that the provisions of clause 3B of the Sugarcane (Control) Order, 1966 shall not be saved and the saving clause contained in sub-clause (*2*) of clause 4 shall not apply.

BILL NO. 109 OF 2009

A Bill further to amend the Payment of Gratuity Act, 1972.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*)This Act may be called the Payment of Gratuity (Amendment) Act, 2009.

(*2*) It shall be deemed to have come into force on the 3rd day of April, 1997.

Amendment of section 2.

2. In the Payment of Gratuity Act, 1972 (hereinafter referred to as the principal Act), in section 2, for clause (*e*), the following clause shall be substituted, namely:— 39 of 1972.

'(*e*) **"employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;'.**

3. After section 13 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 13A.

"13A. Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April, 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment *vide* number S.O. 1080, dated the 3rd day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly: Validation of payment of gratuity.

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the non-payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.".

STATEMENT OF OBJECTS AND REASONS

The Payment of Gratuity Act, 1972 provides for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishment and for matters connected therewith or incidental thereto. Clause (c) of sub-section (*3*) of section 1 of the said Act empowers the Central Government to apply the provisions of the said Act by notification in the Official Gazette to such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day preceding twelve months. Accordingly, the Central Government had extended the provisions of the said Act to the educational institutions employing ten or more persons by notification of the Government of India in the Ministry of Labour and Employment *vide* number S.O. 1080, dated the 3rd April, 1997.

2. The Hon'ble Supreme Court in its judgment in Civil Appeal No. 6369 of 2001, dated the 13th January, 2004, in Ahmedabad Private Primary Teachers' Association *vs.* Administrative Officer and others [AIR 2004 Supreme Court 1426] had held that if it was extended to cover in the definition of 'employee', all kind of employees, it could have as well used such wide language as is contained in clause (*f*) of section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which defines 'employee' to mean any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment. It had been held that non-use of such wide language in the definition of 'employee' under clause (*e*) of section 2 of the Payment of Gratuity Act, 1972 reinforces the conclusion that teachers are clearly not covered in the said definition.

3. Keeping in view the observations of the Hon'ble Supreme Court, it is proposed to widen the definition of 'employee' under the said Act in order to extend the benefit of gratuity to the teachers. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was introduced in Lok Sabha on the 26th November, 2007 and same was referred to the Standing Committee on Labour which made certain recommendations. After examining those recommendations, it was decided to give effect to the amendment retrospectively with effect from the 3rd April, 1997, the date on which the provisions of the said Act were made applicable to educational institutions.

4. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was withdrawn and a new Bill, namely, the Payment of Gratuity (Amendment) Bill, 2009 having retrospective effect was introduced in the Lok Sabha on 24th February, 2009. However, due to dissolution of the Fourteenth Lok Sabha, the said Bill lapsed. In view of the above, it is considered necessary to bring the present Bill.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 12th November, 2009.

MALLIKARJUN KHARGE

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to subsitute clause (e) of section 2 of the Payment of Gratuity Act, 1972 to bring teachers of the educational institutions within the provisions of the said Act for the purpose of payment of gratuity. It is the responsibility of the employer to pay gratuity to his employees. The employees of the Central Government and State Governments are not covered by the said Act. However, in respect of teachers employed by institutions aided by the Central Government, the liability on employers may involve expenditure from the Consolidated Fund of India. The exact expenditure to be incurred on this account cannot be estimated at this stage.

2. The Bill, if enacted, is not likely to involve any other recurring and non-recurring expenditure.

BILL NO. 106 OF 2009

A Bill to amend the Trade Marks Act, 1999.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Trade Marks (Amendment) Act, 2009.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 11

2. In section 11 of the Trade Marks Act, 1999 (hereinafter referred to as the principal Act), in the *Explanation*, for clause (*a*), the following clause shall be substituted, namely:— 47 of 1999.

"(*a*) a registered trade mark or an application under section 18 bearing an earlier date of filing or an international registration referred to in section 36E or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks.".

Amendment of section 21.

3. In section 21 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration.".

Amendment of section 23.

4. In section 23 of the principal Act, in sub-section (*1*), after the words "register the said trade mark", the words "within eighteen months of the filing of the application" shall be inserted.

Insertion of new Chapter IVA.

5. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

'CHAPTER IVA

SPECIAL PROVISIONS RELATING TO PROTECTION OF TRADE MARKS THROUGH INTERNATIONAL REGISTRATION UNDER THE MADRID PROTOCOL

Application of Act in case of international registration under Madrid Protocol.

36A. The provisions of this Chapter shall apply to international applications and international registrations under the Madrid Protocol.

Definitions.

36B. In this Chapter, unless the context otherwise requires,—

(*a*) "application", in relation to a Contracting State or a Contracting Organisation, means an application made by a person who is a citizen of, or is domiciled in, or has a real and effective industrial or commercial establishment in, that Contracting State or a State which is a member of that Contracting Organisation, as the case may be.

Explanation.—For the purposes of this clause, "real and effective industrial or commercial establishment" means and includes any establishment where some *bona fide* industrial or commercial activity takes place and need not necessarily be the principal place of business;

(*b*) "basic application" means an application for the registration of a trade mark filed under section 18 and which is used as a basis for applying for an international registration;

(*c*) "basic registration" means the registration of a trade mark under section 23 and which is used as a basis for applying for an international registration;

(*d*) "Common Regulations" means the Regulations concerning the implementation of the Madrid Protocol;

(*e*) "Contracting Organisation" means a Contracting Party that is an inter-governmental organisation;

(*f*) "Contracting Party" means a Contracting State or Contracting Organisation party to the Madrid Protocol;

(*g*) "Contracting State" means a country party to the Madrid Protocol;

(*h*) "international application" means an application for international registration or for extension of the protection resulting from an international registration to any Contracting Party made under the Madrid Protocol;

(*i*) "International Bureau" means the International Bureau of the World Intellectual Property Organisation;

(*j*) "international registration" means the registration of a trade mark in the register of the International Bureau effected under the Madrid Protocol;

(*k*) "Madrid Agreement" means the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on the 14th day of April, 1891, as subsequently revised and amended;

(*l*) "Madrid Protocol" means the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on the 27th day of June, 1989, as amended from time to time.

Trade Marks Registry to deal with international applications

36C. Notwithstanding anything contained in sub-section (*3*) of section 5, an international application shall be dealt with by the head office of the Trade Marks Registry or such branch office of the Registry, as the Central Government may, by notification in the Official Gazette, specify.

International application originating from India.

36D. (*1*) Where an application for the registration of a trade mark has been made under section 18 or a trade mark has been registered under section 23, the applicant or the registered proprietor may make an international application on the form prescribed by the Common Regulations for international registration of that trade mark.

(*2*) A person holding an international registration may make an international application on the form prescribed by the Common Regulations for extension of the protection resulting from such registration to any other Contracting Party.

(*3*) An international application under sub-section (*1*) or sub-section (*2*) shall designate the Contracting Parties where the protection resulting from the international registration is required.

(*4*) The Registrar shall certify in the prescribed manner that the particulars appearing in the international application correspond to the particulars appearing, at the time of the certification, in the application under section 18 or the registration under section 23, and shall indicate the date and number of that application or the date and number of that registration as well as the date and number of the application from which that registration resulted, as the case may be, and shall within the prescribed period, forward the international application to the International Bureau for registration, also indicating the date of the international application.

(*5*) Where at any time before the expiry of a period of five years of an international registration, whether such registration has been transferred to another person or not, the application under section 18 or the registration under section 23, as the case may be, has been withdrawn or cancelled or has expired or has been finally refused in respect of all or some of the goods or services listed in the international registration, the protection resulting from such international registration shall cease to have effect:

Provided that where an appeal is made against the decision of registration and an action requesting for withdrawal of application or an opposition to the application has been initiated before the expiry of the period of five years of an international registration, any final decision resulting into withdrawal, cancellation, expiration or refusal shall be deemed to have taken place before the expiry of five years of the international registration.

(*6*) The Registrar shall, during the period of five years beginning with the date of international registration, transmit to the International Bureau every information referred to in sub-section (*5*).

(*7*) The Registrar shall notify the International Bureau the cancellation to be effected to an international registration keeping in view the current status of the basic application or the basic registration, as the case may be.

International registrations where India has been designated.

36E. (*1*) The Registrar shall, after receipt of an advice from the International Bureau about any international registration where India has been designated, keep a record of the particulars of that international registration in the prescribed manner.

(*2*) Where, after recording the particulars of any international registration referred to in sub-section (*1*), the Registrar is satisfied that in the circumstances of the case the protection of trade mark in India should not be granted or such protection should be granted subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the international registration has been accepted, he may, after hearing the applicant if he so desires, refuse grant of protection and inform the International Bureau in the prescribed manner within eighteen months from the date on which the advice referred to in sub-section (*1*) was received.

(*3*) Where the Registrar finds nothing in the particulars of an international registration to refuse grant of protection under sub-section (*2*), he shall within the prescribed period cause such international registration to be advertised in the prescribed manner.

(4) The provisions of sections 9 to 21 (both inclusive), 63 and 74 shall apply *mutatis mutandis* in relation to an international registration as if such international registration was an application for registration of a trade mark under section 18.

(5) When the protection of an international registration has not been opposed and the time for notice of opposition has expired, the Registrar shall within a period of eighteen months of the receipt of advice under sub-section (*1*) notify the International Bureau its acceptance of extension of protection of the trade mark under such international registration and, in case the Registrar fails to notify the International Bureau, it shall be deemed that the protection has been extended to the trade mark.

(6) Where a registered proprietor of a trade mark makes an international registration of that trade mark and designates India, the international registration from the date of the registration shall be deemed to replace the registration held in India without prejudice to any right acquired under such previously held registration and the Registrar shall, upon request by the applicant, make necessary entry in the register referred to in sub-section (*1*) of section 6.

(7) A holder of international registration of a trade mark who designates India and who has not been extended protection in India shall have the same remedy which is available to any person making an application for the registration of a trade mark under section 18 and which has not resulted in registration under section 23.

(8) Where at any time before the expiry of a period of five years of an international registration, whether such registration has been transferred to another person or not, the related basic application or, as the case may be, the basic registration in a Contracting Party other than India has been withdrawn or cancelled or has expired or has been finally refused in respect of all or some of the goods or services listed in the international registration, the protection resulting from such international registration in India shall cease to have effect.

Effects of international registration.

36F. (*1*) From the date of the international registration of a trade mark where India has been designated or the date of the recording in the register of the International Bureau about the extension of the protection resulting from an international registration of a trade mark to India, the protection of the trade mark in India shall be the same as if the trade mark had been registered in India.

(*2*) The indication of classes of goods and services given by the applicant shall not bind the Registrar with regard to the determination of the scope of the protection of the trade mark.

Duration and renewal of international registration.

36G. (*1*) The international registration of a trade mark at the International Bureau shall be for a period of ten years and may be renewed for a period of ten years from the expiry of the preceding period.

(*2*) Subject to payment of a surcharge prescribed by the rules, a grace period of six months shall be allowed for renewal of the international registration.'.

Substitution of new section for section 45.

6. For section 45 of the principal Act, the following section shall be substituted, namely:—

Registration of assignments and transmissions

"45. (*1*) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the application, register him as the proprietor of the trade mark in respect of the goods or services in respect of which the assignment or transmission has effect, and shall cause particulars of such assignment or transmission to be entered on the register.

(*2*) The Registrar may require the applicant to furnish evidence or further evidence in proof of title only where there is a reasonable doubt about the veracity of any statement or any document furnished.

(*3*) Where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been determined by a competent court and in all other cases the Registrar shall dispose of the application within the prescribed period.

(*4*) Until an application under sub-section (*1*) has been filed, the assignment or transmission shall be ineffective against a person acquiring a conflicting interest in or under the registered trade mark without the knowledge of assignment or transmission.".

Omission of Chapter X.

7. Chapter X of the principal Act shall be omitted.

Amendment of section 150.

8. In section 150 of the principal Act, in sub-section (*1*), for the word "applications", the words "applications, international applications" shall be substituted.

Amendment of section 157.

9. In section 157 of the principal Act, in sub-section (*2*), —

(*a*) for clause (*vii*), the following clause shall be substituted, namely:-

"(*vii*) the manner of giving a notice of opposition and the fee payable for such notice under sub-section (*1*) and sending counter-statement under sub-section (*2*) and submission of evidence and the time therefor under sub-section (*4*) of section 21;";

(*b*) after clause (*ix*), the following clauses shall be inserted, namely:—

"(*ixa*) the time within which the international application is to be forwarded to the International Bureau and the manner of certifying the particulars by the Registrar under sub-section (*4*) of section 36D;

(*ixb*) the manner of keeping a record of particulars of an international registration under sub-section (*1*) of section 36E;

(*ixc*) the manner of informing the International Bureau under sub-section (*2*) of section 36E;

(*ixd*) the manner of advertising the international registration and the time within which the international registration shall be advertised under sub-section (*3*) of section 36E;";

(*c*) after clause (*xiii*), the following clause shall be inserted, namely:—

"(*xiiia*) the period within which the Registrar shall dispose of an application under sub-section (*3*) of section 45;";

(*d*) clauses (*xxvi*), (*xxvii*) and (*xxviii*) shall be omitted.

Power of Central Government to remove difficulties.

10. (*1*) Notwithstanding anything contained in section 156 of the principal Act, if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary for removing such difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

At present, a person desirous of obtaining registration of his trade mark in other countries has to make separate applications in different languages and pay different fees in the respective countries. There is no provision under the Trade Marks Act, 1999 (hereinafter referred to as the Trade Marks Act) to facilitate Indian nationals as well as foreign nationals to secure simultaneous protection of trade marks in other countries.

2. The Madrid Protocol, administered by the International Bureau of the World Intellectual Property Organisation, a specialised agency of the United Nations, was adopted in 1989. The Madrid Protocol is a simple, facilitative and cost-effective system for international registration of trade marks. It enables the nationals of the Member countries of the Protocol to obtain protection of trade marks within the prescribed period of 18 months by filing a single application with one fee and in one language in their country of origin, which in turn is transmitted to the other designated countries through the International Bureau.

3. Accession to the Madrid Protocol entails amendments to the Trade Marks Act. For this purpose, it is proposed to suitably amend the Trade Marks Act and to incorporate therein a new Chapter IVA containing special provisions relating to protection of international registration of trade marks under the Madrid Protocol. It is sought to empower the Registrar of Trade Marks to deal with international applications originating from India as well as those received from the International Bureau and maintain record of international registrations. Definitions of new terms are being given. It is further proposed to provide for the effect of international registration, duration and its renewal.

4. It is also proposed to remove the discretion of the Registrar to extend the time for filing notice of opposition of published applications and provide for a uniform time limit of four months in all cases. Further, with a view to simplify the law relating to transfer of ownership of trade marks by assignment or transmission and to bring the law generally in tune with international practice and modern business needs, section 45 is proposed to be modified. It is also proposed to omit Chapter X of the Trade Marks Act dealing with special provisions for textile goods, as it has now become redundant.

5. The Bill seeks to achieve the above objects.

ANAND SHARMA

NEW DELHI;

The 31st July, 2009.

FINANCIAL MEMORANDUM

By the Trade Marks (Amendment) Bill, 2009, provisions are made for providing protection to international registration of trade marks and to facilitate applicants from India to secure protection of their trade marks in various countries as may be designated by them in accordance with the Madrid system. The Trade Marks Registry acting as an office of origin in respect of applications originating from India will be responsible for certification of international applications received by it that the particulars mentioned correspond to the application pending or registered with it and transmit them immediately to World Intellectual Property Organisation for registration and thereafter forwarding it to the designated countries where protection is sought. Additional work will devolve on the Trade Marks Registry in the matter of dealing with international registrations where India is designated as Contracting Party for protection of trade marks. The proposed amendment imposes strict time limits on the Registrar to dispose of applications for registration of trade marks generally and in the matter of protection of international trade marks under the Madrid Protocol. Since the work will be performed exclusively by the Head Office or a branch office of the Registry specially designated and notified by the Central Government in this behalf to administer the provisions of the amending Act, the infrastructure at the Registry both in terms of manpower and equipment, will be augmented.

2. With a view to build on the existing capabilities and further strengthening the Intellectual Property (IP) administration to make it globally accredited for providing effective and efficient services to IP community, a plan proposal for modernisation of IP offices has been prepared and approved by the competent authority. The proposal addresses the concerns of reliability, effectiveness and user-friendliness of the procedures and has the capability to deal with increasing workload. It also focuses on the need of taking up on priority basis capacity building, public awareness and sensitization of the IP users to achieve global standards. It is expected that the additional manpower and infrastructural facilities proposed under the Plan Scheme during the 11th Plan period will take care of the needs of the organisation in the administration of the provisions of the amendment Bill. Requisite funds have also been allocated and provided in the Budget. As such, no separate financial commitment is sought on account of this Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Trade Marks (Amendment) Bill, 2009 proposes to amend section 157 of the Trade Marks Act, 1999. The said section empowers the Central Government to make rules to carry out the provisions of the Trade Marks Act and also enumerates certain matters specifically in sub-section (*2*) thereof. The said sub-section has been proposed to be amended also to enumerate therein the following matters:—

(*a*) the manner of giving a notice of opposition and the fee payable for such notice under sub-section (*1*) of section 21;

(*b*) the time within which the international application is to be forwarded to the International Bureau and the manner of certifying the particulars by the Registrar under sub-section (*4*) of section 36D;

(*c*) the manner of keeping a record of particulars of international registration under sub-section (*1*) of section 36E;

(*d*) the manner of informing the International Bureau under sub-section (*2*) of section 36E;

(*e*) the manner of advertising the international registration under sub-section (*3*) of section 36E; and

(*f*) the period within which the Registrar shall dispose of an application under sub-section (*3*) of section 45.

2. The aforesaid matters relate to procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character. The rules made shall be laid before each House of Parliament.

P.D.T. ACHARY,
Secretary-General.

PRINTED BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI
AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI. 2009

GMGIPMRND—5470GI(S-5)—21-12-2009.